

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GARY W. TYNER,

Case No. 3:23-cv-00471-ART-CLB

Plaintiff

ORDER

v.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants

I. DISCUSSION

Pro se Plaintiff Gary W. Tyner has an inmate early mediation conference on Tuesday, August 27, 2024. (ECF No. 6). Plaintiff filed a “notice” informing the Court that he granted limited power of attorney to inmate Dennis L. McCabe for “all legal matters involving U.S. District Court Case No. 3:23-cv-00471-ART-CLB, to and including all mediation matters, and to act as my legal guardian of fact.” (ECF No. 7 at 4). In his “notice,” Plaintiff also requests that Dennis McCabe “be present to assist me in any and all legal and financial matters. Mr. McCabe has full legal authority to act in my behalf.” (*Id.* at 2).

Nevada’s Uniform Power of Attorney Act is codified in Nevada Revised Statute Chapter 162A and governs powers of attorney for financial matters and healthcare decisions. A “[p]ower of attorney” is “a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term ‘power of attorney’ is used.” Nev. Rev. Stat. § 162A.090. Under NRS § 162A.470, the “construction of authority generally” provides that a power of attorney may authorize the principal’s agent to “[d]emand, receive and obtain, by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled” Nev. Rev. Stat. § 162A.470(1).

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1 However, it is unlawful for a person to practice law in Nevada unless that person
2 is an “active member of the State Bar of Nevada or otherwise authorized to practice law
3 in this state pursuant to the rules of the Supreme Court.” Nev. Rev. Stat. § 7.285(1)(a).
4 It is well-established in both Nevada state courts and the federal courts that an individual
5 may represent himself or herself in court but there is no rule or statute that permits a non-
6 attorney to represent any other person in court. See *Guerin v. Guerin*, 993 P.2d 1256,
7 1258 (Nev. 2000) (holding that “[a]lthough an individual is entitled to represent himself or
8 herself in the district court, see SCR 44, no rule or statute permits a non-attorney to
9 represent any other person, a company, a trust, or any other entity in the district courts
10 or in this court”); 28 U.S.C. § 1654 (providing that *pro se* litigants have the right to plead
11 and conduct their own cases personally); *Cato v. United States*, 70 F.3d 1103, 1105 n.1
12 (9th Cir. 1995) (noting that “a non-attorney may appear only in her own behalf”).

13 In *Eby v. Johnston L. Off., P.C.*, 518 P.3d 517 (Nev. App. 2022), the Nevada Court
14 of Appeals directly addressed an inmate’s argument that Nevada’s power of attorney laws
15 permitted “a nonlawyer agent with a valid power of attorney concerning claims and
16 litigation to essentially step into the shoes of the principal and litigate an action as if the
17 principal were proceeding in *pro se*, or that it simply authorizes such an agent to engage
18 in the practice of law on the principal’s behalf.” *Id.* at 523. The Nevada Court of Appeals
19 rejected that argument and held “a nonlawyer agent under a power of attorney is not
20 entitled to appear in *pro se* in place of the principal or engage in the practice of law on
21 the principal’s behalf.” *Id.* at 526. Instead, the Nevada Court of Appeals explained that
22 the power of attorney is “better understood as allowing a principal to grant an agent the
23 authority over claims and litigation the principal would have as a *client* in an attorney-
24 client relationship.” *Id.* (emphasis added).

25 In this case, inmate Dennis McCabe is not an active member of the State Bar of
26 Nevada and is not authorized to practice law in Nevada. McCabe cannot act as Plaintiff’s
27 attorney in this case. To the extent that Plaintiff’s “notice” is telling the Court that McCabe
28 is Plaintiff’s attorney or that McCabe is stepping into Plaintiff’s shoes as the *pro se* litigant,

1 the notice is denied. Plaintiff must represent himself in this case and must show up to
2 any mediations and hearings ordered by the Court in this case. If Plaintiff does not appear
3 at the court-ordered mediations or hearings, Plaintiff's case may be subject to dismissal.

4 If Plaintiff is requesting inmate help at the mediation, he must file a motion with the
5 Court.

6 **II. CONCLUSION**

7 It is therefore ordered that Plaintiff will appear and represent himself at any court-
8 ordered mediations or hearings because a non-lawyer cannot represent Plaintiff in this
9 case.

10 It is further ordered that, if Plaintiff does not appear at the court-ordered mediations
11 or hearings, this action may be subject to dismissal without prejudice.

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13 DATED THIS 26th day of August 2024.

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16 UNITED STATES MAGISTRATE JUDGE
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